



**BellSouth Telecommunications, Inc.**

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Nashville, TN 37201-3300

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July 28, 2003

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Guy M. Hicks  
General Counsel

TRA DOCKET ROOM  
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VIA HAND DELIVERY

Mr. Joe Werner, Hearing Officer  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37238

Re: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with  
BellSouth Telecommunications, Inc. Pursuant to the  
Telecommunications Act of 1996  
Docket No. 03-00119

Dear Mr. Werner:

Enclosed for your information is a copy of the non-proprietary portion of BellSouth's Supplemental Responses to Interrogatories and Requests for Production of Documents propounded by DeltaCom on June 12, 2003. Please note that the excerpts from the ICO agreements are proprietary and are being submitted pursuant to the Proprietary Order entered in this matter. A copy is being provided to counsel for DeltaCom.

Very truly yours,

Guy M. Hicks

GMH:ch

**BEFORE THE  
TENNESSEE REGULATORY AUTHORITY**

In Re:           Petition for Arbitration of ITC^DeltaCom Communications, Inc. with  
                  BellSouth Telecommunications, Inc. Pursuant to the Telecommunications  
                  Act of 1996

Docket No. 03-00119

**BELLSOUTH TELECOMMUNICATIONS, INC.'S**  
**SUPPLEMENTAL RESPONSES TO**  
**ITC^DELTA COM COMMUNICATIONS, INC.'S**  
**FIRST SET OF INTERROGATORIES**

BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits the  
following supplemental responses to the First Set of Interrogatories of ITC^DeltaCom  
Communications, Inc. ("DeltaCom").

**SPECIFIC RESPONSES**

BellSouth Telecommunications, Inc.  
Tennessee Regulatory Authority  
Docket No. 03-00119  
Supplement to ITC^DeltaCom's  
First Set of Interrogatories  
June 12, 2003  
Item No. 3  
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REQUEST: Does BellSouth have agreements with its vendors that include terms longer than three years?

RESPONSE: Yes.

REQUEST: How much did BellSouth spend for OSS enhancements for each year beginning in 1999 to 2002?

RESPONSE: Following is a chart of BellSouth's totals for expense and capitalized wholesale-related OSS spending for the years requested. BellSouth currently does not differentiate between spending within work categories such as 'enhancements', 'maintenance', and 'defect correction'.

<u>(000's)</u>			
<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>
\$112,587	\$166,933	\$194,238	\$140,377

BellSouth Telecommunications, Inc.  
Tennessee Regulatory Authority  
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REQUEST: How much does BellSouth anticipate it will spend on OSS enhancements for 2003 and 2004?

RESPONSE: BellSouth estimates it will spend approximately \$133M dollars for wholesale-related OSS changes in 2003. Budget estimates for 2004 have not been developed.

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REQUEST: Of the spending for OSS enhancements between 1999 and 2002, what portion was spent on OSS enhancements requested by CLECs?

RESPONSE: BellSouth does not currently track OSS spending as differentiated by requesting party (i.e., BellSouth- vs. CLEC-initiated), and, therefore, cannot provide an answer.

REQUEST: How much has BellSouth spent on correcting defective code?

RESPONSE: BellSouth has not spent any additional money to correct defective code provided to BellSouth by its software development vendors. BellSouth's Information Technology group manages the development of software by vendors as part of an overall contract administration strategy, and vendor responsibility for defect correction is included in the terms and conditions for those agreements.

REQUEST: Is BellSouth compensated by its vendors for defective code or the late delivery of code?

If yes, as a result of defective code, how much did BellSouth collect in 2002?

RESPONSE: As a general rule, BellSouth receives no compensation from its software development vendors for defective code. As stated in the response to Item 22, the terms and conditions of BellSouth's contracts with the vendors have provisions regarding the vendors' responsibility for defect correction within the agreed costs of a project.

However, those terms and conditions contain provisions for compensation to BellSouth in the event of severe extenuating circumstances. Such was the case with Telcordia for Release 11.0, implemented in December 2002. Because of the late delivery date of acceptable code, and because of the requirement to pull some of the previously authorized functionality, BellSouth will receive from Telcordia in 2003 a compensation payment of \$2.2M. BellSouth received no such payments in 2002 from any software development vendors for defective code related to interconnection services activities.



REQUEST: How many OSS defects currently exist?

RESPONSE: Twenty Type-6 defects currently exist (as of July 16, 2003), categorized as follows:

Scheduled for Implementation (15)

CR0151 (Rls. 14.0, Nov. 23, 2003; Validated Sept. 6, 2000)  
CR0426 (Rls. 14.0, Nov. 23, 2003; Validated Apr. 17, 2002)  
CR0531 (Rls. 14.0, Nov. 23, 2003; Validated Oct. 30, 2001)  
CR0555 (Rls. 14.0, Nov. 23, 2003; Validated Nov. 15, 2001)  
CR1166 (Rls. 14.0, Nov. 23, 2003; Validated Apr. 16, 2003)  
CR1277 (Rls. 14.0, Nov. 23, 2003; Validated July 2, 2003)  
CR0833 (Rls. 15.0, Feb. 8, 2004; Validated Sept. 16, 2002)  
CR0868 (Rls. 15.0, Feb. 8, 2004; Validated July 17, 2002)  
CR0870 (Rls. 15.0, Feb. 8, 2004; Validated July 17, 2002)  
CR0968 (Rls. 15.0, Feb. 8, 2004; Validated March 8, 2002)  
CR1084 (Rls. 15.0, Feb. 8, 2004; Validated Jan. 28, 2003)  
CR1094 (Rls. 15.0, Feb. 8, 2004; Validated Feb. 4, 2003)  
CR1132 (Rls. 15.0, Feb. 8, 2004; Validated Mar. 10, 2003)  
CR0813 (Rls. 16.0, May 23, 2004; Validated June 6, 2002)  
CR0918 (Rls. 16.0, May 23, 2004; Validated Aug. 21, 2002)

Not Yet Scheduled for Implementation (5)

CR1114 (Validated February 28, 2003)  
CR1142 (Validated March 19, 2003)  
CR1226 (Validated June 5, 2003)  
CR1232 (Validated June 11, 2003)  
CR1276 (Validated July 1, 2003)

Although currently unscheduled, BellSouth is working to find slots for these defects either in maintenance releases or using BellSouth capacity in 2004.

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Complete information on each of these change requests, as well as that for upcoming releases, can be found at BellSouth's interconnection website:

[http://interconnection.bellsouth.com/markets/lec/ccp\\_live/index.html](http://interconnection.bellsouth.com/markets/lec/ccp_live/index.html)

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REQUEST: How long have these OSS defects been "pending" or identified?

RESPONSE: See BellSouth's response to Item 24.

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REQUEST: When does BellSouth plan to correct these OSS defects?

RESPONSE: See BellSouth's response to Item 24.

**REQUEST:** Does BellSouth flow through any payments from its vendors for defective code back to CLECs?

**RESPONSE:** Not directly. To the extent that BellSouth receives payments or credits from its vendors for defective code, that information is included as input to the OSS cost recovery model, and that might affect subsequent SOMECS/SOMAN charges by state. As stated in the response to Item 23, there has been only one occurrence that falls into this category.

**REQUEST:** If BellSouth backbills ITC^DeltaCom in March of 2003 for services or elements ordered in 2000 but were not billed due to BellSouth error, does BellSouth make performance payments or adjustments?

**RESPONSE:** If ITC^DeltaCom is backbilled by BellSouth in March 2003 in Tennessee due to a BellSouth error, the amount backbilled would be included in ITC^DeltaCom penalty payment calculations for March 2003 for Tennessee. However, ITC^DeltaCom would only receive a penalty payment for March 2003 if the ratio of ITC^DeltaCom total billing to ITC^DeltaCom adjustments is less than the ratio of BellSouth total retail billing to BellSouth total retail adjustments.

**REQUEST:** When BellSouth finds a billing error and backbills CLECs, does BellSouth apply an adjustment to performance penalty payments to all CLECs or only those reporting?

**RESPONSE:** Performance measurement plan calculations are performed for all CLECs that are backbilled by BellSouth due to billing errors. The amounts backbilled to each CLEC are included in penalty payment calculations for those CLECs. Ratios of total CLEC billing to total CLEC adjustments are calculated for each CLEC and are compared to the BellSouth ratio of total retail billing to total retail adjustments. All CLECs whose ratios fall below the BellSouth ratio are paid performance measurement penalties.

REQUEST: How does BellSouth determine which month to apply the adjustment to the performance measure for the billing error?

RESPONSE: The adjustment impacts the performance measure for the data month the adjustment is applied to the customer's bill.



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REQUEST: In its contracts with its vendors, does BellSouth have a time limit on backbilling charges? If yes, what are those time limits?

RESPONSE: Yes. BellSouth does have interconnection agreements with Independent Companies that contain a limitation on backbilling charges. Please see response to DeltaCom's First Production of Documents Request No. 2.

REQUEST: Does BellSouth have any interconnection agreements with any CLEC, ILEC, affiliate or any other carrier that provide a time limit on backbilling of charges (e.g., 6 months or 12 months)? If yes, identify that BellSouth agreement and the time limit.

RESPONSE: Yes. Most agreements between BellSouth and Independent Companies contain language stating generally that no claim or adjustment may be made after more than 2 years. However, a few agreements have language that limits this period to less than 2 years. BellSouth has agreements with the following Independent Companies in Tennessee.

- 1) Ardmore Telephone Company
- 2) Ben Lomand Rural Telephone Cooperative, Inc
- 3) Chickamauga Telephone Corporation
- 4) Dekalb Telephone Cooperative
- 5) Highland Telephone Cooperative, Inc.
- 6) ALLTEL Tennessee, Inc.
- 7) Bledsoe Telephone Cooperative Corporation
- 8) Loretto Telephone Company
- 9) Millington Telephone Company, Inc.
- 10) North Central Telephone Cooperative Corp.
- 11) Ringgold Telephone Company
- 12) Trenton Telephone Company, Inc.
- 13) Twin Lakes Telephone Cooperative Corporation
- 14) United Telephone Company
- 15) Yorkville Telephone Cooperative
- 16) West Kentucky Rural Telephone Cooperative Corporation, Inc.

Note: The following agreements are between BellSouth and various Independent companies for which Telephone and Data Systems ("TDS") is a holding company.

- 17) Concord Telephone Exchange, Inc.
- 18) Humphreys County Telephone Company, Inc
- 19) Tellico Telephone Company, Incorporated

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- 20) Tennessee Telephone Company
- 21) United Inter-Mountain Telephone Company

See response to DeltaCom's First Request for Production of Documents,  
Request No. 2, for the specific contract language in the Independent  
Company agreements.

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REQUEST: Does BellSouth have any agreement other than an interconnection agreement with any ILEC, affiliate or other carrier that provides a time limit on backbilling? If yes, identify that agreement.

RESPONSE: BellSouth is not aware of any agreements with any Independent Company, other than interconnection agreements, that provide a time limit on backbilling.

BellSouth Telecommunications, Inc.  
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REQUEST: Describe the process used by BellSouth to arrive at the "market rate" of \$14.00 (the recurring charge for a port labeled as "market rate").

RESPONSE: BellSouth has been unable to locate anyone with knowledge or information of the process used to arrive at the "market rate" of \$14.00. The individuals that were involved in the process are no longer employees of the company.

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**REQUEST:** Identify the business analysis or cost studies undertaken by BellSouth perform to develop its proposed market rates.

**RESPONSE:** See BellSouth's response to Item No. 47. BellSouth has been unable to locate any workpapers or documents that may have existed or been used by the individuals who developed the \$14.00 market rate.

BellSouth Telecommunications, Inc.  
Tennessee Regulatory Authority  
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June 12, 2003  
Item No.67  
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REQUEST: Does BST apply the same deposit criteria to its retail business customers that it applies to its CLEC customers on a nondiscriminatory basis?

RESPONSE: Yes.

REQUEST: Please provide the deposit requirement guidelines for retail business customers and the guidelines used to determine the amount of deposit for retail business customers.

RESPONSE: The basic deposit criteria/guidelines for retail and wholesale accounts are as follows:

- All customers are scored 1 through 10 utilizing the commercial credit score and the paydex score from D&B (if available), and years in business. This score is called risk assessment manager ("RAM") score.
- Any customer that scores 5 or below would merit security, unless BellSouth payment history and customer financials indicate strength that is not apparent in the D & B information.
- The larger a customer (monthly billing greater than \$100K) is, the more information is reviewed to make the decision. If a customer is less than \$100K, RAM score is used as a primary decision factor.
- BellSouth reviews all new customers for deposit requirements in both wholesale and retail.
- Retail customers are managed through establishing credit lines. If a sale to a customer will make the monthly spend exceed the established credit line for the customer, then BellSouth must review for deposit to determine whether or not to extend additional credit or secure the account.



RESPONSE (CONT.):

- Wholesale customers and retail customers with > \$100K monthly billing are reviewed once a year to determine if additional security is required or if security on hand should be refunded.
- On larger customers where audited financial statements are available, BellSouth will conduct a ratio analysis to determine financial strength.
- BellSouth reviews existing customer payment patterns to determine if there is any existing delinquency before BellSouth extends additional credit.

BellSouth Telecommunications, Inc.  
Tennessee Regulatory Authority  
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REQUEST: How do the BST wholesale/CLEC credit managers coordinate with the BST retail credit managers coordinate deposit policy to ensure nondiscrimination between wholesale and retail customers?

RESPONSE: BellSouth credit managers handle both wholesale and retail customers.

Respectfully submitted, this 28<sup>th</sup> day of July, 2003,

BELLSOUTH TELECOMMUNICATIONS, INC.

By: 

Guy M. Hicks

Joelle J. Phillips

333 Commerce Street, Suite 2101

Nashville, TN 37201-3300

615/214-6301

R. Douglas Lackey

E. Earl Edenfield

675 W. Peachtree St., NE, Suite 4300

Atlanta, GA 30375

**BEFORE THE  
TENNESSEE REGULATORY AUTHORITY**

In Re:	)	
Petition for Arbitration of ITC^DeltaCom	)	
Communications, Inc. with BellSouth	)	Docket No. 03-00119
Telecommunications, Inc., pursuant to the	)	
Telecommunications Act of 1996.	)	
_____	)	

**BELLSOUTH TELECOMMUNICATIONS, INC.'S**  
**SUPPLEMENTAL RESPONSES TO**  
**ITC^DELTACOM COMMUNICATIONS, INC.'S**  
**FIRST PRODUCTION OF DOCUMENTS**

BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits the following supplemental responses to the First Request for Production of Documents of ITC^DeltaCom Communications, Inc. ("DeltaCom").

**SPECIFIC RESPONSES**

**REQUEST NO. 2:** Provide any contracts or agreements between BellSouth and its vendors and between BellSouth and other carriers that provides a limit on backbilling of charges.

**RESPONSE:** Responsive documents are attached.

**REQUEST NO. 3:** Produce any cost studies, papers, or business analysis that were completed as part of BellSouth's development of its market rates (See Instruction above.)

**RESPONSE:** See responses to DeltaCom's First Set of Interrogatories, Item Nos 47 and 48.

**REQUEST NO. 4:** Produce any emails, correspondence, or memos that discuss or relate to the development or establishment of the market rates.

**RESPONSE:** See responses DeltaCom's First Set of Interrogatories, Item Nos 47 and 48.

**REQUEST NO. 7:** Provide any emails, memos, correspondence, or other documents regarding BellSouth's consideration and execution of the "reverse" collocation agreement with ITC^DeltaCom.

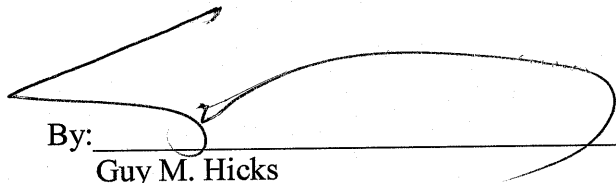
**RESPONSE:** BellSouth produced the responsive document in its responses to DeltaCom's First Request for Production of Documents, filed on July 2, 2003. For your convenience, the responsive document is being provided again.

**REQUEST NO. 8:** Produce any license agreements, contracts, or interconnection agreements that BellSouth has with other CLECs/ILECs where BellSouth collocates in the CLEC or ILEC space.

**RESPONSE:** BellSouth produced the responsive documents in its responses to DeltaCom's First Request for Production of Documents, filed on July 2, 2003. For your convenience, the responsive documents are being provided again.

Respectfully submitted, this 28<sup>th</sup> day of July, 2003,

BELLSOUTH TELECOMMUNICATIONS, INC.

A handwritten signature in black ink, appearing to read "Guy M. Hicks", is written over a horizontal line. The signature is stylized with a large loop and a long horizontal stroke.

By:

Guy M. Hicks

Joelle J. Phillips

333 Commerce Street, Suite 2101

Nashville, TN 37201-3300

615/214-6301

R. Douglas Lackey

E. Earl Edenfield

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Atlanta, GA 30375

BellSouth Telecommunications, Inc.  
Tennessee Regulatory Authority  
Docket No. 03-00119  
Supplement to ITC^DeltaCom's  
First Request for Production of Documents  
June 12, 2002  
Item No. 7

## **ATTACHMENT**

**Collocation Agreement**

**By and Between**

**ITC^DeltaCom Communications, Inc.**

**and**

**BellSouth Telecommunications, Inc.**



## PHYSICAL COLLOCATION AGREEMENT

THIS AGREEMENT is made by and between BellSouth Telecommunications, Inc., ("BellSouth"), a Georgia corporation, and ITC^DeltaCom Communications, Inc., formerly DeltaCom, Inc., ("DeltaCom"), an Alabama corporation, and shall be deemed effective as of ~~1998~~, 1998. This Agreement may refer to either BellSouth or DeltaCom or both as a "Party" or "Parties."

### WITNESSETH

WHEREAS, BellSouth is a local exchange telecommunications company authorized to provide telecommunications services in the state of Georgia; and

WHEREAS, DeltaCom is an alternative local exchange telecommunications company ("CLEC") authorized to provide telecommunications services in the state of Georgia; and

NOW THEREFORE, in consideration of the mutual agreements contained herein, BellSouth and DeltaCom agree as follows:

#### I. SCOPE OF AGREEMENT

A. DeltaCom hereby grants to BellSouth a right to occupy that certain enclosed area designated by DeltaCom within a DeltaCom point of presence site (hereinafter "DeltaCom POP Site") of a size and dimension which is specified by BellSouth and agreed to by DeltaCom (hereinafter "Collocation Space"). DeltaCom will design and construct at BellSouth's agreed upon expense, a wall or other delineation to establish a clear division between the Collocation Space and other areas of the DeltaCom POP Site dedicated to DeltaCom's use.

B. BellSouth shall use the Collocation Space for the purposes of providing services to BellSouth's customers, installing, maintaining and operating BellSouth's equipment (to include testing and monitoring equipment) which is used to interconnect with telecommunications services and facilities provided by DeltaCom. Pursuant to Article III, following, BellSouth may place BellSouth-owned fiber entrance facilities to the Collocation Space, in which case the arrangement is designated "Expanded Interconnection." Placement of equipment in the Collocation Space without the use of BellSouth-owned entrance facilities is designated "Service Interconnection." In addition to, and not in lieu of, interconnection to DeltaCom services and facilities, BellSouth may connect to other interconnectors within the designated DeltaCom POP Site. The Collocation Space may be used for no other purposes except as specifically described herein or authorized in writing by DeltaCom.

C. BellSouth may not provide or make available space within the Collocation Space to any third party. Notwithstanding the foregoing, any wholly owned affiliate of BellSouth (i.e., BellSouth's Parent, subsidiary or any entity under common ownership and control with BellSouth) who elects to be made a party to this Agreement may collocate within any DeltaCom POP Site in a separate Collocation Space pursuant to this Agreement by completing the Application/Inquiry process provided for in this Agreement. Any violation of this provision shall be deemed a material breach of this Agreement.

D. BellSouth agrees to pay the rates and charges identified at Exhibit A attached hereto.

E. A Collocation Space will be provided to BellSouth at each DeltaCom POP Site identified at Exhibit B attached hereto, which Exhibit shall be updated from time to time as additional DeltaCom POP Sites are made subject to the terms of this Agreement.

## II. TERM OF AGREEMENT

A. Term. The term of this Agreement shall be coterminous with the Interconnection Agreement between DeltaCom, Inc., and BellSouth Telecommunications, Inc., the term of which commenced on July 1, 1997, and scheduled to expire on June 30, 1999, or otherwise extended as provided therein.

B. Expiration of Initial Term. Upon expiration of the initial term, those service arrangements made available under this Agreement and existing at the time of termination shall continue without interruption under one of the following as agreed to by the Parties: (a) a new agreement executed by the Parties, (b) standard Interconnection terms and conditions approved and made generally effective by the appropriate regulatory agency in each of the nine states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee, (c) Tariff terms and conditions generally available to interconnecting companies, or (d) if none of the above is available, under the terms of this Agreement on a month-to-month basis until an arbitration proceeding has been concluded by the Parties.

C. Commencement Date. The "Commencement Date" shall be the first day after BellSouth's equipment becomes operational as described in Article II.D, following.

D. Occupancy. DeltaCom will notify BellSouth when the Collocation Space is ready for occupancy. BellSouth must place operational telecommunications equipment in the Collocation Space and connect with DeltaCom's network within one hundred eighty (180) days after receipt of such notice. DeltaCom may consent to an extension beyond 180 days upon a demonstration by BellSouth that circumstances beyond its reasonable control prevented BellSouth from completing installation by the prescribed date. If BellSouth fails to place operational telecommunications equipment in the Collocation Space within 180 days and such failure continues for a period of thirty (30) days after receipt of written notice from DeltaCom, then and in that event BellSouth's right to occupy the Collocation Space terminates and DeltaCom shall have no further obligations to BellSouth with respect to said Collocation Space. Termination of BellSouth's rights to the Collocation Space pursuant to this paragraph shall not operate to release BellSouth from its obligation to reimburse DeltaCom for all costs reasonably incurred by DeltaCom in preparing the Collocation Space, but rather such obligation shall survive this Agreement. For purposes of this paragraph, BellSouth's telecommunications equipment will be deemed operational when cross-connected to DeltaCom's network for the purpose of service provision.

E. Termination. BellSouth may terminate occupancy in a particular Collocation Space upon thirty (30) days prior written notice to DeltaCom. Upon termination of such occupancy, BellSouth at its expense shall remove its equipment and other property from the Collocation Space. BellSouth shall have thirty (30) days from the termination date to complete such removal; provided, however, that BellSouth shall continue payment of monthly fees to DeltaCom until such date as BellSouth has fully vacated the Collocation Space. Should BellSouth fail to vacate the Collocation Space within thirty (30) days from the termination date, DeltaCom shall have the right to remove the equipment and other

property of BellSouth at BellSouth's expense and with no liability for damage or injury to BellSouth's property unless caused by the negligence or intentional misconduct of DeltaCom.

### **III. USE OF COLLOCATION SPACE**

A. Nature of Use. DeltaCom shall permit BellSouth to place, maintain and operate in the Collocation Space any equipment that BellSouth is authorized, as described herein, by DeltaCom and by Federal or State regulators to place, maintain and operate in Collocation Space and that is used by BellSouth to provide services which BellSouth has the legal authority to provide. The equipment must at a minimum comply with the BellCore Network Equipment Building System (NEBS) General Equipment Requirements (TR-NWT-000063) and National Electric Code standards. BellSouth may elect to enclose the Collocation Space. BellSouth shall not use the Collocation Space for marketing purposes. BellSouth shall place no signs or marking of any kind (except for a plaque or other identification affixed to BellSouth's equipment and reasonably necessary to identify BellSouth's equipment, and which shall include a list of emergency contacts with telephone numbers), in the area surrounding the Collocation Space or on the grounds of the DeltaCom POP Site housing the Collocation Space.

B. Entrance Facilities. BellSouth may elect to place BellSouth-owned entrance facilities into the Collocation Space. DeltaCom will designate the point of interconnection in proximity to the DeltaCom POP Site building housing the Collocation Space, such as an entrance manhole or a cable vault. BellSouth will provide and place cable at the point of interconnection of sufficient length to be pulled through conduit and into the splice location. No splicing will be permitted in the entrance manhole. BellSouth will provide a sufficient length of fire retardant riser cable, to which the entrance cable will be spliced, which will extend from the splice location to the BellSouth's equipment in the Collocation Space. BellSouth must contact DeltaCom for instructions prior to placing the entrance facility cable in the manhole. BellSouth is responsible for maintenance of the entrance facilities. Dual entrance will be permitted where capacity exists. The interconnection point for entrance facilities extending from a rooftop antenna will be designated by DeltaCom on the Application/Inquiry response.

C. Demarcation Point. A point-of-termination bay(s) will designate the point(s) of interconnection between BellSouth's equipment and/or network and DeltaCom's network. Each party will be responsible for maintenance and operation of all equipment/facilities on its side of the demarcation point. BellSouth may, at its option, provide its own point-of-termination bay(s) in accordance with DeltaCom's guidelines and specifications, which DeltaCom will provide upon request.

D. BellSouth's Equipment and Facilities. BellSouth is solely responsible for the design, engineering, testing, performance, monitoring, maintenance, and repair of the equipment and facilities used by BellSouth in the Collocation Space. Without limitation of the foregoing provisions, BellSouth will be responsible for servicing, supplying, repairing, installing and maintaining the following on its side of the demarcation point: (1) cable(s); (2) equipment; (3) point-of-termination cross-connects; (4) point of termination maintenance, including replacement fuses and circuit breaker restoration, if not performed by DeltaCom; and (5) connection cable(s) and associated equipment which may be required within the Collocation Space to the points of interconnection.

E. Easement Space. From time to time DeltaCom may require access to the Collocation Space. DeltaCom retains the right to access such space for the purpose of making equipment and building modifications (e.g., running, altering or removing racking, ducts, electrical wiring, HVAC, and cables). DeltaCom will give reasonable notice to BellSouth when access to the Collocation Space is

required. BellSouth may elect to be present whenever DeltaCom performs work in the Collocation Space. The Parties agree that BellSouth will not bear any of the expense associated with this work.

F. Access and Administration. BellSouth shall have access to the Collocation Space twenty-four (24) hours a day, seven (7) days a week. A security escort will be required at DeltaCom POP Sites where separate, secured ingress and egress are not available and access would require BellSouth to traverse restricted areas. All employees, agents and contractors of BellSouth having access to the Collocation Space shall comply with DeltaCom's policies and practices pertaining to fire, safety and security, and each such employee, agent or contractor shall display an identification badge issued by BellSouth or certified vendor which contains a current photo, the individual's name and company name/logo. BellSouth agrees to comply with all laws, ordinances and regulations affecting the use of the Collocation Space. Upon expiration of this Agreement, BellSouth shall surrender the Collocation Space to DeltaCom in the same condition as when first occupied by the BellSouth except for ordinary wear and tear.

G. Interference or Impairment. Notwithstanding any other provisions of this Agreement, equipment and facilities placed in the Collocation Space shall not interfere with or impair service provided by DeltaCom or by any other interconnector located in the DeltaCom POP Site; shall not endanger or damage the facilities of DeltaCom or of any other interconnector, the Collocation Space, or the DeltaCom POP Site; shall not compromise the privacy of any communications carried in, from, or through the DeltaCom POP Site; and shall not create an unreasonable risk of injury or death to any individual or to the public. If DeltaCom reasonably determines that any equipment or facilities of BellSouth violate the provisions of this paragraph, DeltaCom shall give written notice to BellSouth, which notice shall direct BellSouth to cure the violation within twenty-four (24) hours or, at a minimum, to commence curative measures within 24 hours and to exercise reasonable diligence to complete such measures as soon as possible thereafter. If BellSouth fails to take curative action within 24 hours or if the violation is of a character which poses an immediate and substantial threat of damage to property, injury or death to any person, or interference/impairment of the services provided by DeltaCom, then and only in that event DeltaCom may take such action as it deems appropriate to correct the violation, including without limitation the interruption of electrical power to BellSouth's equipment. DeltaCom will endeavor, but is not required, to provide notice to BellSouth prior to taking such action and shall have no liability to BellSouth for any damages arising from such action, except to the extent that such action by DeltaCom constitutes gross negligence or willful misconduct.

H. Personalty and its Removal. Subject to requirements of this Agreement, BellSouth may place or install in or on the Collocation Space such facilities and equipment as it deems desirable for the conduct of business. Personal property, facilities and equipment placed by BellSouth in the Collocation Space shall not become a part of the Collocation Space, even if nailed, screwed or otherwise fastened to the Collocation Space, but shall retain their status as personalty and may be removed by BellSouth at any time. Any damage caused to the Collocation Space by BellSouth's employees, agents or representatives during the removal of such property shall be promptly repaired by BellSouth at its expense.

I. Alterations. In no case shall BellSouth or any person acting on behalf of BellSouth make any rearrangement, modification, improvement, addition, repair, or other alteration to the Collocation Space or the DeltaCom POP Site without the written consent of DeltaCom, which consent shall not be unreasonably withheld. The cost of any such specialized alterations shall be paid by BellSouth.

#### IV. ORDERING AND PREPARATION OF COLLOCATION SPACE

A. Application for Space. BellSouth shall submit to DeltaCom a complete and accurate Application and Inquiry document, together with payment of the Application Fee as stated in Exhibit A. The Application shall contain a detailed description and schematic drawing of the equipment to be placed in BellSouth's Collocation Space(s) and an estimate of the amount of square footage required. DeltaCom will respond to BellSouth's Application in writing following the completion of review, planning and design activities. Such response will include estimates on space availability, space preparation costs and space availability dates.

B. Bona Fide Firm Order. BellSouth shall indicate its intent to proceed with equipment installation in a DeltaCom POP Site by submitting a Bona Fide Firm Order to DeltaCom. A Bona Fide Firm Order requires BellSouth to complete the Application/Inquiry process described in Article IV.A preceding, submit an updated Application document based on the outcome of the Application/Inquiry process, and pay all applicable fees referenced in Article V, following. The Bona Fide Firm Order must be received by DeltaCom no later than thirty (30) days after DeltaCom's response to BellSouth's Application/Inquiry. Space preparation for the Collocation Space will not begin until DeltaCom receives the Bona Fide Firm Order and all applicable fees.

C. Use of Certified Vendor. BellSouth shall select an equipment installation vendor which has been approved as a DeltaCom Certified Vendor to perform all engineering and installation work required in the Collocation Space. DeltaCom shall provide BellSouth a list of Certified Vendors upon request. The Certified Vendor shall be responsible for installing BellSouth's equipment and components, extending power cabling to the DeltaCom power distribution frame, performing operational tests after installation is complete, and notifying DeltaCom's equipment engineers and BellSouth upon successful completion of installation. The Certified Vendor shall bill BellSouth directly for all work performed for BellSouth pursuant to this Agreement and DeltaCom shall have no liability for nor responsibility to pay such charges imposed by the Certified Vendor.

D. Alarm and monitoring. DeltaCom shall place environmental alarms in the DeltaCom POP Site for the protection of DeltaCom equipment and facilities. BellSouth shall be responsible for placement, monitoring and removal of environmental and equipment alarms used to service the Collocation Space, if such equipment is desired by BellSouth for the protection of its own equipment and facilities. Upon request, DeltaCom will provide BellSouth with applicable tariffed service(s) to facilitate remote monitoring of collocated equipment by BellSouth.

E. Basic Telephone Service. Upon request of BellSouth, DeltaCom will provide basic telephone service to the Collocation Space under the rates, terms and conditions of the then current tariff offering for the service requested.

F. Space Preparation. DeltaCom shall pro rate the costs of any renovation or upgrade to DeltaCom POP Site space or support mechanisms which is required to accommodate physical collocation. BellSouth's pro rated share will be calculated by multiplying such cost by a percentage equal to the amount of square footage occupied by BellSouth divided by the total DeltaCom POP Site square footage receiving renovation or upgrade. For this section, support mechanisms provided by DeltaCom may include, but not be limited to heating/ventilation/air conditioning (HVAC) equipment, HVAC duct work, cable support structure, fire wall(s), mechanical upgrade, asbestos abatement, ground plane addition, or separate ingress/egress construction. Such renovation or upgrade will be evaluated and the charges assessed on a per DeltaCom POP Site basis. DeltaCom will make best efforts to provide for occupancy of the Collocation Space on the negotiated date and will advise BellSouth of delays.

BellSouth agrees DeltaCom shall not be liable to BellSouth for delays in providing possession of the Collocation Space.

G. Space Enclosure. Upon request of BellSouth, DeltaCom shall construct an equipment arrangement enclosure of a size and dimension jointly agreed upon by the Parties. BellSouth may request enclosed floor space in increments of one hundred (100) square feet, with a minimum of one hundred (100) square feet. BellSouth may, at its option, arrange with a DeltaCom certified contractor to construct the space enclosure in accordance with DeltaCom's guidelines and specifications. Such contractor shall directly bill BellSouth for activities associated with the space enclosure construction.

H. Cancellation. If BellSouth cancels its order for the Collocation Space(s), BellSouth will reimburse DeltaCom for any expenses incurred up to the date that written notice of the cancellation is received. In no event will the level of reimbursement under this paragraph exceed the maximum amount BellSouth would have otherwise paid for work undertaken by DeltaCom if no cancellation of the order had occurred.

#### V. RATES AND CHARGES

BellSouth shall pay for Collocation Space(s) according to the rates contained in Exhibit A attached hereto and pursuant to the following:

A. Non-recurring Fees. In addition to the Application Fee referenced in Article IV preceding, BellSouth shall remit payment of a Cable Installation Fee, Space Construction Fee, as applicable, and one-half (1/2) of the estimated Space Preparation Fee coincident with submission of a Bona Fide Firm Order. The outstanding balance of the actual Space Preparation Fee shall be due thirty (30) days following BellSouth's receipt of a bill or invoice from DeltaCom. DeltaCom shall provide documentation to establish the actual Space Preparation Fee. Cable Installation Fee(s) are assessed per entrance fiber placed. No Cable Installation Fee is required for Service Interconnection. The Space Preparation Fee will be pro rated as prescribed in Article IV.F preceding. The Space Enclosure Construction Fee will be assessed for the materials and installation cost of the equipment enclosure. DeltaCom's engineering and other labor time associated with establishing the Physical Collocation Arrangement will be assessed as Additional Engineering charges, upon the same terms and conditions as provided in BellSouth's F.C.C. Number 1 Tariff, Sections 13.1 and 13.2. An estimate of the Additional Engineering charges will be provided by DeltaCom to BellSouth in the Application Response.

B. Floor Space. The floor space charge includes charges for lighting, heat, air conditioning, ventilation and other allocated expenses associated with maintenance of the DeltaCom POP Site but does not include amperage necessary to power BellSouth's equipment. When the Collocation Space is enclosed by walls or other divider, BellSouth shall pay floor space charges based upon the number of square feet so enclosed. When the Collocation Space is not enclosed, BellSouth shall pay floor space charges based upon the number of square feet contained in a shadow print of BellSouth's equipment racks and POT bay, plus a factor of 2.50 multiplied by the shadow print, which represents BellSouth's share of wiring and provisioning aisle space for provisioning and maintenance activities. Floor space charges are due beginning with the date on which DeltaCom releases the Collocation Space for occupancy or on the date BellSouth first occupies the Collocation Space, whichever is sooner.

C. Power. Charges for -48V DC power will be assessed per ampere per month based upon the certified vendor engineered and installed power feed fused ampere capacity. Rates include redundant feeder fuse positions (A&B) and cable rack to BellSouth's equipment or space enclosure. Fuses and

power feed cables (A&B) must be engineered (sized), furnished and installed by BellSouth's certified vendor. The BellSouth's certified vendor must also provide a copy of the engineering power specification prior to the Commencement Date. In the event DeltaCom shall be required to construct additional DC power plant or upgrade the existing DC power plant in a DeltaCom POP Site as a result of BellSouth's request to collocate in that DeltaCom POP Site ("Power Plant Construction"), BellSouth shall pay all costs associated with the Power Plant Construction. The determination of whether Power Plant Construction is necessary shall be within DeltaCom's sole, but reasonable, discretion. DeltaCom will notify BellSouth of the need for the Power Plant Construction and will estimate the costs associated with the Power Plant Construction if DeltaCom were to perform the Power Plant Construction. BellSouth shall pay DeltaCom one-half of the estimated Power Plant Construction costs prior to commencement of the work. BellSouth shall pay DeltaCom the balance due (actual cost less one-half of the estimated cost) within thirty (30) days of completion of the Power Plant Construction. BellSouth has the option to perform the Power Plant Construction itself; provided, however, that such work shall be performed by a DeltaCom certified contractor and such contractor shall comply with DeltaCom's guidelines and specifications. Where the Power Plant Construction results in construction of a new power plant room, upon termination of this Agreement, BellSouth shall have the right to remove its equipment from the power plant room, but shall otherwise leave the room intact. Where the Power Plant Construction results in an upgrade to DeltaCom's existing power plant, upon termination of this Agreement, such upgrades shall become the property of DeltaCom.

D. Security Escort. A security escort will be required whenever BellSouth or its approved agent desires access to the entrance manhole or must traverse a restricted area within the DeltaCom POP Site. Rates for a DeltaCom security escort are assessed in one-half (1/2) hour increments according to the schedule appended hereto as Exhibit A.

E. Rate "True-Up". The Parties agree that the interim prices reflected herein shall be "true-up" (up or down) based on final prices either determined by further agreement or by final order, including any appeals, in a proceeding involving DeltaCom before the regulatory authority for the State in which the services are being performed or any other body having jurisdiction over this Agreement (hereinafter "Commission"). Under the "true-up" process, the interim price for each service shall be multiplied by the volume of that service purchased to arrive at the total interim amount paid for that service ("Total Interim Price"). The final price for that service shall be multiplied by the volume purchased to arrive at the total final amount due ("Total Final Price"). The Total Interim Price shall be compared with the Total Final Price. If the Total Final Price is more than the Total Interim Price, BellSouth shall pay the difference to DeltaCom. If the Total Final Price is less than the Total Interim Price, DeltaCom shall pay the difference to BellSouth. Each party shall keep its own records upon which a "true-up" can be based and any final payment from one party to the other shall be in an amount agreed upon by the Parties based on such records. In the event of any disagreement as between the records or the Parties regarding the amount of such "true-up," the Parties agree that the Commission shall be called upon to resolve such differences.

F. Other. Payment of all other charges under this Agreement shall be due thirty (30) days after receipt of the bill (payment due date). BellSouth will pay a late payment charge of one and one-half percent (1-1/2%) assessed monthly on any balance which remains unpaid after the payment due date.

## VI. INSURANCE

A. BellSouth at its sole discretion shall maintain self insurance policies and practices to cover commercial general liabilities, statutory workers compensation and employers liability requirements. In the event BellSouth does not maintain self insurance, the following shall apply:

A.1. BellSouth shall, at its sole cost and expense, procure, maintain, and keep in force insurance as specified in this Article VI and underwritten by insurance companies licensed to do business in the states contained in Exhibit B attached hereto and having a BEST Insurance Rating of B ++ X (B ++ ten).

A.2. BellSouth shall maintain the following specific coverages:

a. Commercial General Liability coverage in the amount of ten million dollars (\$10,000,000.00) or a combination of Commercial General Liability and Excess/Umbrella coverage totaling not less than ten million dollars (\$10,000,000.00). DeltaCom shall be named as an ADDITIONAL INSURED on ALL applicable policies as specified herein.

b. Statutory Workers Compensation coverage and Employers Liability coverage in the amount of one hundred thousand dollars (\$100,000.00) each accident, one hundred thousand dollars (\$100,000.00) each employee by disease, and five hundred thousand dollars (\$500,000.00) policy limit by disease.

c. BellSouth may elect to purchase business interruption and contingent business interruption insurance, having been advised that DeltaCom assumes no liability for loss of profit or revenues should an interruption of service occur.

A.3. The limits set forth in Article VI.A.2 above may be increased by DeltaCom from time to time during the term of this Agreement upon thirty (30) days notice to BellSouth to at least such minimum limits as shall then be customary with respect to comparable occupancy of DeltaCom structures.

A.4. All policies purchased by BellSouth shall be deemed to be primary and not contributing to or in excess of any similar coverage purchased by DeltaCom. All insurance must be in effect on or before the date equipment is delivered to DeltaCom's DeltaCom POP Site and shall remain in effect for the term of this Agreement or until all BellSouth's property has been removed from DeltaCom's DeltaCom POP Site, whichever period is longer. If BellSouth fails to maintain required coverages, DeltaCom may pay the premiums thereon and seek reimbursement of same from BellSouth.

A.5. BellSouth shall submit certificates of insurance reflecting the coverages required pursuant to this Section a minimum of ten (10) days prior to the commencement of any work in the Collocation Space. BellSouth shall arrange for DeltaCom to receive thirty (30) days advance notice of cancellation from BellSouth's insurance company. BellSouth shall forward a certificate of insurance and notice of cancellation to DeltaCom at the following address:

Mr. Steve Moses, Sr. Vice President  
ITC^DeltaCom Communications, Inc.  
1241 O.G. Skinner Drive  
West Point, GA 31833



A.6. BellSouth must conform to recommendations made by DeltaCom's fire insurance company to the extent DeltaCom has agreed to, or shall hereafter agree to, such recommendations.

A.7. Failure to comply with the provisions of this Section will be deemed a material breach of this Agreement.

#### **VII. MECHANICS LIENS**

If any mechanics lien or other liens shall be filed against property of DeltaCom, or any improvement thereon by reason of or arising out of any labor or materials furnished or alleged to have been furnished or to be furnished to or for BellSouth or by reason of any changes, or additions to DeltaCom property made at the request or under the direction of the BellSouth, BellSouth shall, within thirty (30) days after receipt of written notice from DeltaCom either pay such lien or cause the same to be bonded off DeltaCom's property in the manner provided by law. BellSouth shall also defend on behalf of DeltaCom, at BellSouth's sole cost and expense, any action, suit or proceeding which may be brought for the enforcement of such liens and BellSouth shall pay any damage and discharge any judgment entered thereon.

#### **VIII. INSPECTIONS**

DeltaCom shall conduct an inspection of BellSouth's equipment and facilities in the Collocation Space(s) prior to the activation of facilities between BellSouth's equipment and equipment of DeltaCom. DeltaCom may conduct an inspection if BellSouth adds equipment and may otherwise conduct routine inspections at reasonable intervals mutually agreed upon by the Parties. DeltaCom shall provide BellSouth with a minimum of forty-eight (48) hours or two (2) business days, whichever is greater, advance notice of all such inspections.

#### **IX. SECURITY**

Only DeltaCom employees, DeltaCom certified vendors and authorized employees or agents of BellSouth will be permitted in the DeltaCom POP Site. BellSouth shall provide its employees and agents with picture identification which must be worn and visible at all times while in the Collocation Space or other areas in or around the DeltaCom POP Site. DeltaCom may refuse entry to any person who fails to display the identification required by this section.

#### **X. INDEMNITY / LIMITATION OF LIABILITY**

##### **A. Liability Cap.**

1. With respect to any claim or suit, whether based in contract, tort or any other theory of legal liability, by BellSouth, any BellSouth customer or by any other person or entity, for damages associated with any of the services provided by DeltaCom pursuant to or in connection with this Agreement, including but not limited to the installation, provision, preemption, termination, maintenance, repair or restoration of service, and subject to the provisions of the remainder of this Article, DeltaCom's liability shall be limited to an amount equal to the proportionate charge for the service provided pursuant to this Agreement, for the period during which the service was affected. Notwithstanding the foregoing, claims for damages by BellSouth, by any BellSouth customer or by any other persons or entity resulting from the gross negligence or willful misconduct of DeltaCom and claims for damages by BellSouth

resulting from the failure of DeltaCom to honor in one or more material respects any one or more of the material provisions of this Agreement shall not be subject to such limitation of liability.

2. With respect to any claim or suit, whether based in contract, tort or any other theory of legal liability, by DeltaCom, any DeltaCom customer or by any other person or entity, for damages associated with any of the services provided by BellSouth pursuant to or in connection with this Agreement, including but not limited to the installation, provision, preemption, termination, maintenance, repair or restoration of service, and subject to the provisions of the remainder of this Article, BellSouth's liability shall be limited to an amount equal to the proportionate charge for the service provided pursuant to this Agreement for the period during which the service was affected. Notwithstanding the foregoing, claims for damages by DeltaCom, any DeltaCom customer or any other person or entity resulting from the gross negligence or willful misconduct of BellSouth and claims for damages by DeltaCom resulting from the failure of BellSouth to honor in one or more material respects any one or more of the material provisions of this Agreement shall not be subject to such limitation of liability.

B. Neither Party shall be liable for any act or omission of any other telecommunications company to the extent such other telecommunications company provides a portion of a service provided by BellSouth to its customers.

C. Neither Party shall be liable for damages to the other Party's terminal location, point of interconnection, or the other Party's customers' premises resulting from the furnishing of a service, including but not limited to the installation and removal of equipment and associated wiring, except to the extent the damage is caused by such Party's gross negligence or willful misconduct.

D. No Consequential Damages - Except as otherwise provided in this Article X, neither Party shall be liable to the other Party for any indirect, incidental, consequential, reliance, or special damages suffered by such other Party (including without limitation damages for harm to business, lost revenues, lost savings, or lost profits suffered by such other Party), regardless of the form of action, whether in contract, warranty, strict liability, or tort, including without limitation negligence of any kind whether active or passive, and regardless of whether the Parties knew of the possibility that such damages could result. Each Party hereby agrees to hold harmless the other Party and such other Party's affiliates, and their respective officers, directors, employees and agents from all such damages. Provided, however, nothing contained in this Article X shall limit a Party's liability to the other for (i) willful or intentional misconduct, gross negligence, or failure to honor one or more of the material provisions of this Agreement in one or more material respects; (ii) bodily injury, death or damage to tangible real or tangible personal property proximately caused by a Party's negligent act or omission or that of its agents, subcontractors or employees, nor shall anything contained in this Article X limit the Parties' indemnification obligations as specified herein.

E. Obligation to Indemnify.

1. Each Party (the "Indemnifying Party") shall, and hereby agrees to, defend at the other Party's request, indemnify and hold harmless the other Party and each of its officers, directors, employees and agents (each, an "Indemnitee") against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or kind, known or unknown, liquidated or unliquidated, including without limitation all reasonable costs and expenses incurred (legal, accounting or otherwise) (collectively, "Damages") arising out of, resulting from or based upon any pending or threatened claim, action, proceeding or suit by any third party (a "Claim") (i) arising from any breach of any representation, warranty or covenant made by such indemnifying party in this Agreement,

or (ii) based upon injuries or damage to any person or property arising out of or in connection with this Agreement that are the result of the Indemnifying Party's actions, breach of Applicable Law, or the actions of the Indemnifying Party employees, agents and subcontractors.

2. Promptly after receipt of notice of any Claim or the commencement of any action for which a Party may seek indemnification pursuant to this Article X, the Indemnitee shall promptly give written notice clearly referencing this Article X to the Indemnifying Party of such Claim or action; provided, however, the Indemnitee's failure to so notify the Indemnifying Party will not relieve the latter from any liability it may have to the Indemnitee except to the extent the Indemnifying Party is actually prejudiced by such failure. The Indemnitee shall cooperate, at the indemnifying Party's expense, with all reasonable requests made by the Indemnifying Party for assistance or information relating to such Claim or action. The Indemnitee will have the right to participate in the investigation, defense and settlement of such Claim or action, with separate counsel chosen and paid for by the Indemnitee. However, the Indemnifying Party will have the right to control the defense and settlement of such Claim or action.

F. Each Party's failure to perform under this Agreement shall be excused by labor strikes, civil commotion, criminal actions taken against them, acts of God, and other circumstances beyond their reasonable control.

G. The obligations of the Parties contained within this Article X shall survive the expiration of this Agreement.

#### **XI. PUBLICITY**

Either Party agrees to submit to the other Party all advertising, sales promotion, press releases, and other publicity matters relating to this Agreement or mentioning or implying the tradenames, logos, trademarks or service marks (hereinafter "Marks") of the other Party and/or any of its affiliated companies or language from which the connection of said Marks therewith may be inferred or implied, or mentioning or implying the names of any personnel of the other Party and/or any of its affiliated companies, and each Party further agrees not to publish or use such advertising, sales promotions, press releases, or publicity matters without the other Party's prior written consent.

#### **XII. DESTRUCTION OF COLLOCATION SPACE**

In the event a Collocation Space is wholly or partially damaged by fire, windstorm, tornado, flood or by similar causes to such an extent as to be rendered wholly unsuitable for BellSouth's permitted use hereunder, then either party may elect within ten (10) days after such damage, to terminate this Agreement, and if either party shall so elect, by giving the other written notice of termination, both parties shall stand released of and from further liability under the terms hereof. If the Collocation Space shall suffer only minor damage and shall not be rendered wholly unsuitable for BellSouth's permitted use, or is damaged and the option to terminate is not exercised by either party, DeltaCom covenants and agrees to proceed promptly without expense to BellSouth, except for improvements not the property of DeltaCom, to repair the damage. DeltaCom shall have a reasonable time within which to rebuild or make any repairs, and such rebuilding and repairing shall be subject to delays caused by storms, shortages of labor and materials, government regulations, strikes, walkouts, and causes beyond the control of DeltaCom, which causes shall not be construed as limiting factors, but as exemplary only. Where allowed and where practical in the sole judgment of DeltaCom, BellSouth may erect a temporary facility while DeltaCom rebuilds or makes repairs. In all cases where the Collocation Space shall be rebuilt or

repaired, BellSouth shall be entitled to an equitable abatement of rent and other charges, depending upon the unsuitability of the Collocation Space for BellSouth's permitted use, until such Collocation Space is fully repaired and restored and BellSouth's equipment installed therein (but in no event later than thirty (30) days after the Collocation Space is fully repaired and restored).

#### **XIII. EMINENT DOMAIN**

If the whole of a Collocation Space shall be taken by any public authority under the power of eminent domain, then this Agreement shall terminate as of the day possession shall be taken by such public authority and rent and other charges for the Collocation Space shall be paid up to that day with proportionate refund by DeltaCom of such rent and charges as may have been paid in advance for a period subsequent to the date of the taking. If any part of the Collocation Space shall be taken under eminent domain, DeltaCom and BellSouth shall each have the right to terminate this Agreement and declare the same null and void, by written notice of such intention to the other party within ten (10) days after such taking.

#### **XIV. FORCE MAJEURE**

Neither party shall be in default by reason of any failure in performance of this Agreement, in accordance with its terms and conditions, if such failure arises out of causes beyond the control of the nonperforming party including, but not restricted to, acts of God, acts of government, insurrections, fires, floods, accidents, epidemics, quarantines, restrictions, strikes, freight embargoes, inability to secure raw materials or transportation facilities, acts or omissions of carriers or any and all other causes beyond the party's control.

#### **XV. ASSIGNMENT**

BellSouth acknowledges that this Agreement does not convey any right, title or interest in the DeltaCom POP Site to BellSouth. BellSouth may not sublet its rights under this Agreement, nor shall it allow a third party to use or occupy the Collocation Space at any time or from time to time without the prior written consent, and at the sole discretion, of DeltaCom. This Agreement is not assignable by either party without the prior written consent of the other party, and any attempt to assign any of the rights, duties or obligations of this Agreement without such consent is void. Notwithstanding the foregoing, either party may assign any rights, duties or obligations of this Agreement to a parent, subsidiary or affiliate without the consent of the other party.

#### **XVI. NONEXCLUSIVITY**

BellSouth understands that this Agreement is not exclusive and that DeltaCom may enter into similar agreements with other parties. Assignment of space pursuant to all such agreements shall be determined by space availability and made on a first come, first served basis.

#### **XVII. NO IMPLIED WAIVER**

No consent or waiver by either party to or of any breach of any covenant, term, condition, provision or duty of the other party under this Agreement shall be construed as a consent to or waiver of any other breach of the same or any other covenant, term, condition, provision or duty. No such consent or waiver shall be valid unless in writing and signed by the party granting such consent or waiver.

**XVIII. NOTICES**

Except as otherwise provided herein, any notices or demands that are required by law or under the terms of this Agreement shall be given or made by BellSouth or DeltaCom in writing and shall be given by hand delivery, or by certified or registered mail, and addressed to the Parties as follows:

To BellSouth:

BellSouth Telecommunications, Inc.  


To DeltaCom:

ITC^DeltaCom Communications, Inc.  
1241 O.G. Skinner Drive  
West Point, Georgia 31833  
Attn: Steve Moses, Sr. Vice President

With copy to:

ITC^DeltaCom Communications, Inc.  
700 Boulevard South, Suite 101  
Huntsville, Alabama 35802  
Attn: General Counsel

Such notices shall be deemed to have been given in the case of certified or registered mail when deposited in the United States mail with postage prepaid.

**XIX. RESOLUTION OF DISPUTES**

Except as otherwise stated in this Agreement, the Parties agree that if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, the parties will petition the Commission in the state where the services are provided pursuant to this Agreement for a resolution of the dispute. However, each party reserves any rights it may have to seek judicial review of any ruling made by the Public Service Commission concerning this Agreement.

**XX. SECTION HEADINGS**

The section headings used herein are for convenience only, and shall not be deemed to constitute integral provisions of this Agreement.

**XXI. AUTHORITY**

Each of the parties hereto warrants to the other that the person or persons executing this Agreement on behalf of such party has the full right, power and authority to enter into and execute this Agreement on such party's behalf and that no consent from any other person or entity is required as a condition precedent to the legal effect of this Agreement.

**XXII. REVIEW OF AGREEMENT**

The parties acknowledge that each has had an opportunity to review and negotiate this Agreement and has executed this Agreement only after such review and negotiation. The parties further agree that this Agreement shall be deemed to have been drafted by both Licensor and Licensee and the terms and conditions contained herein shall not be construed any more strictly against one party or the other. This

Agreement is entered without prejudice to any positions which either Party has taken, or may take in the future, before any legislative, regulatory, judicial or other governmental body.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives in one or more counterparts, each of which shall constitute an original, on the date indicated below.

ITC^DELTACOM COMMUNICATIONS, INC. BELLSOUTH TELECOMMUNICATIONS, INC.

By: \_\_\_\_\_  
Authorized Signature

Steve Moses  
Sr. Vice President

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Authorized Signature

Jerry Hendrix  
Director

Date: \_\_\_\_\_

## Schedule of Rates and Charges

<u>Rate Element Description</u>	<u>Type of Charge</u>	<u>Charge</u>
Application Fee	NRC (per Arrangement, per C.O.)	\$3,850.00
Subsequent Application Fee (Note 1)	NRC (per Arrangement, per C.O.)	\$1,600.00
Space Preparation Fee (Note 2)	NRC (per Arrangement, per C.O.)	ICB
Space Enclosure Construction Fee (Note 2)	NRC (per 100 square feet)	\$4,500.00
Space Preparation and Construction		
Reimbursement for ATHNGAMA	NRC (see Note 3)	\$26,000.00
Additional Engineering Fee (Note 4)	NRC	ICB
Cable Installation	NRC (per entrance cable)	\$2,750.00
Floor Space		
Zone A	RC (per square foot)	\$7.50
Zone B	RC (per square foot)	\$6.75
Power	RC (per amp)	\$5.00
Cable Support structure	RC (per entrance cable)	\$13.35
Cross-Connects		
2-wire	RC (per cross-connect)	\$0.30
4-wire	RC (per cross-connect)	\$0.50
DS1	RC (per cross-connect)	\$8.00
DS3	RC (per cross-connect)	\$72.00
2-wire	NRC (first cross-connect)	\$19.20
4-wire	NRC (first cross-connect)	\$19.20
DS1	NRC (first cross-connect)	\$155.00
DS3	NRC (first cross-connect)	\$155.00
2-wire	NRC (each additional cross-connect)	\$19.20
4-wire	NRC (each additional cross-connect)	\$19.20
DS1	NRC (each additional cross-connect)	\$27.00
DS3	NRC (each additional cross-connect)	\$27.00
POT Bay		
2-wire	RC (per cross-connect)	\$0.40
4-wire	RC (per cross-connect)	\$1.20
DS1	RC (per cross-connect)	\$1.20
DS3	RC (per cross-connect)	\$8.00
Additional Security Access Cards	NRC-ICB (each)	\$10.00



## Schedule of Rates and Charges (cont.)

<u>Rate Element Description</u>	<u>Type of Charge</u>	<u>Charge</u>
Direct Connection (Note 5)		
(1) Fiber Arrangement	RC (per cable, per linear foot)	\$0.06
-with Initial Application	NRC (per Arrangement)	n/a
-Subsequent to Application	NRC (per Arrangement)	\$246.00
(2) Copper or Coaxial Arrangement	RC (per cable, per linear foot)	\$0.03
-with Initial Application	NRC (per Arrangement)	n/a
-Subsequent to Application	NRC (per Arrangement)	\$246.00
Security Escort		
Basic - first half hour	NRC-ICB	\$41.00
Overtime - first half hour	NRC-ICB	\$48.00
Premium - first half hour	NRC-ICB	\$55.00
Basic - additional half hour	NRC-ICB	\$25.00
Overtime - additional half hour	NRC-ICB	\$30.00
Premium - additional half hour	NRC-ICB	\$35.00

Notes

NRC: Non-recurring Charge - one-time charge

RC: Recurring Charge - charged monthly

ICB: Individual Case Basis - one-time charge

(1) Subsequent Application Fee. DeltaCom requires the submission of an Application Fee for modifications to an existing arrangement. However, when the modifications do not require DeltaCom to expend capital (e.g., additional space or power requirements, BST termination/cross-connect equipment, etc.), DeltaCom will assess the Subsequent Application Fee in lieu of the Application Fee.

(2) Space Preparation Fee. The Space Preparation Fee is a one-time fee, assessed per arrangement, per location. It recovers costs associated with the shared physical collocation area within a DeltaCom POP Site, which include survey, engineering, design and building modification costs. DeltaCom will pro rate the total shared space preparation costs among the collocators at each location based on the amount of square footage occupied by each collocator. This charge may vary depending on the location and the type of arrangement requested.

Space Enclosure Construction Fee. The Space Enclosure Construction Fee is a one-time fee, assessed per enclosure, per location. It recovers costs associated with providing an optional equipment arrangement enclosure, which include architectural and engineering fees, materials,

### Schedule of Rates and Charges (cont.)

#### Notes (cont.)

- (2) (cont.) and installation costs. This fee is assessed in 50 square-foot increments, with a minimum space enclosure size of 100 square feet. BellSouth may, at its option, arrange with a DeltaCom certified contractor to construct the space enclosure in accordance with DeltaCom's guidelines and specifications. In this event, the contractor shall directly bill BellSouth for the space enclosure, and this fee shall not be applicable.
- (3) Additional Engineering Fee. DeltaCom's engineering and other labor costs associated with establishing the Physical Collocation Arrangement shall be recovered as Additional Engineering charges, upon the same terms and conditions as provided in BellSouth's F.C.C. Number 1 Tariff, Sections 13.1 and 13.2. An estimate of the Additional Engineering charges shall be provided by DeltaCom in the Application Response.
- (4) Direct Connection. As stated in Article I.B of the Agreement, BellSouth may connect to other interconnectors within the designated DeltaCom POP Site in addition to, and not in lieu of, interconnection to DeltaCom services and facilities. BellSouth must use its Certified Vendor to place the direct connection. The Direct Connection NRC is assessed when direct connection is the only work requested by BellSouth. If any other work in addition to the direct connection is being requested, whether for an initial installation of a Collocation Space or for an augmentation to an existing Collocation Space, an Application Fee or a Subsequent Application Fee will be assessed in lieu of the Direct Connection NRC. Construction charges may also apply; DeltaCom shall provide an estimate of these charges in the Application Response.

**EXHIBIT B**

**Bona Fide Physical Collocation Arrangements**

**DeltaCom POP Site Name:**  
**DeltaCom POP Site CLLI Code:**  
**City:**  
**State:**  
**Date of Bona Fide Firm Order:**

**DeltaCom POP Site Name:**  
**DeltaCom POP Site CLLI Code:**  
**City:**  
**State:**  
**Date of Bona Fide Firm Order:**

**DeltaCom POP Site Name:**  
**DeltaCom POP Site CLLI Code:**  
**City:**  
**State:**  
**Date of Bona Fide Firm Order:**

**DeltaCom POP Site Name:**  
**DeltaCom POP Site CLLI Code:**  
**City:**  
**State:**  
**Date of Bona Fide Firm Order:**

**DeltaCom POP Site Name:**  
**DeltaCom POP Site CLLI Code:**  
**City:**  
**State:**  
**Date of Bona Fide Firm Order:**

**DeltaCom POP Site Name:**  
**DeltaCom POP Site CLLI Code:**  
**City:**  
**State:**  
**Date of Bona Fide Firm Order:**

**DeltaCom**  
**Reverse Collocation Negotiation Contacts**

Contacts: Sarah Chenoweth 706-645-9045 took Janine's place  
Rodney Hyatt 256-650-3846 Atty  
Janine Kemp Moses 256-241-6292 JKM Consulting pg 888-842-9806

BellSouth: Brenda Douglas 205-321-7726 AE  
Mike Honfinger 205-321-7795 SD

Date	Topic
6-22-98	Letter from Jerry Hendrix to Steve Moses. BellSouth will not pay for collocation in CLEC's premises.
6-29	Letter from Steve Moses to Jerry Hendrix. DeltaCom says BellSouth is required to provide interconnecting trunking.
7-23	Letter from Jerry Hendrix to Steve Moses. BellSouth will negotiate Reverse Collocation for Local Interconnection. (DeltaCom did not include this letter in their GA complaint.)
8-4	Called Sarah. Asked her to send electronic copy of their proposed agreement. They want to go month-to-month, no fees until their Collocation agreement with us expires. Then make a reciprocal "Master" collocation agreement b/t BST and DC. Jerry, Mary Jo, Pam say NO.
8-4	I called Sarah. Told her we don't want reciprocal Collo Agmt. Told her we are developing an agmt for their review. She will try to reach Rodney.
8-5	Rodney called. Told him we are developing contract. Told him we will negotiate rates for Local Interconnection only. He want to know whether we will pay our rates to them for collocation.
8-6	Sent our proposal to Rodney, Sarah, Steve Moses via Internet. Rodney confirmed receipt. He thanked me.
8-11	I called Rodney. He had someone in his office. Left msg to tell him that we will negotiate rates that are $[\$0 \leq \text{rate we pay} \leq \text{BST rates}]$ after we clarify terms and conditions of contract. Asked who my point of contact will be for negotiation. Asked him to call me.
8-12	Sarah called. She will call to tell me who my point of contact will be. May be Rodney or Janine Moses (formerly Kemp).
8-25	I called Sarah. Left message for her to call with contact. Asked for feedback on our proposed contract and to see their counterproposal. I asked that we continue to discuss the contract while the attorneys work out their issues to save time and e better prepared to move forward after we resolve the complaint issues.
8-25	Sarah called. She said Janine Moses will be contact (number above).
8-25	Left message on Janine's VMS. Paged her (12:42).
8-26	Janine left message. Sarah passed info on to Janine. Janine has not had a chance to review our proposal. She will be traveling and will try to review on the plane. Would like to discuss it perhaps Thursday or Friday.
8-26	Called Rodney's office for phone number. He picked up. Told him I would like to continue to negotiate our contract while our attorneys work out the complaint filed at the GA PSC so we would be ready to go. He liked the idea.
8-28	Met with Steve Moses, Tom Hyde, _____, Attorneys (David Adelman, 404-853-8206). Reviewed issues raised in GA complaint. They wanted us to add our rates to our proposal.
9-1	Spoke with Nanette, Janine. Both received proposal. They will discuss. We will discuss changes, both Nanette's items and anything they see in current proposal. They will call me.

**(Version: 9-30-98)**

Printed: 6/20/2003

**Issues List - Collocation Negotiations  
(DeltaCom)**

(Version: 9-30-98)

#	Date Created	Issue	Owner	Status	Solution	Date Closed

Printed: 6/20/2003



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**BellSouth Interconnection Services**

675 West Peachtree Street  
Room 34S91  
Atlanta, Georgia 30375

David Thierry  
(404) 927-7509  
Fax: (404) 529-7839

June 20, 2003

Rodney Hyatt  
Assistant General Counsel  
ITC^DeltaCom  
700 Boulevard South  
Suite 101  
Huntsville, Alabama 35802

Dear Rodney:

Enclosed for review and signature are two signed copies of the Collocation Agreement between BellSouth and ITC^DeltaCom which allows BellSouth to occupy space in an ITC^DeltaCom POP site. Please have both copies signed, retain one copy for your records, and return the other signed copy to me at the above address.

I enjoyed working with you on this project. Please contact me at 404-927-7509 should you have any questions.

Sincerely,

David Thierry  
Manager

BellSouth Telecommunications, Inc.  
Tennessee Regulatory Authority  
Docket No. 03-00119  
Supplement to ITC^DeltaCom's  
First Request for Production of Documents  
June 12, 2002  
Item No. 8

## **ATTACHMENT**



AT&T Adoptions of Agreement			
CLEC	State Effective	Effective Date	Expiration Date
Airface Communications, Inc.	FL	03/27/03	10/25/04
Allegiance Telecom of FL, Inc.	FL	11/10/02	10/25/04
AugLink Communications, Inc.	FL	03/26/03	10/25/04
Aura Communications, Inc.	KY	08/29/01	07/19/04
Aura Communications, Inc.	NC	09/07/01	07/18/04
EZ Phone, Inc.	GA	07/04/03	08/06/04
EZ Phone, Inc.	TN	07/11/03	05/21/05
EZ Phone, Inc.	KY	06/13/03	07/19/04
Ganoco, Inc. dba American Dial Tone	GA	09/13/02	08/06/04
Ganoco, Inc. dba American Dial Tone	MS	09/13/02	03/27/04
Ganoco, Inc. dba American Dial Tone	NC	09/13/02	07/18/04
Ganoco, Inc. dba American Dial Tone	SC	09/12/02	12/20/04
Global Dialtone, Inc.	FL	04/23/03	10/25/04
Gulf Coast Telecom, Inc.	FL	06/11/03	10/25/04
Interactive Services Network, Inc. dba ISN Communications	FL	02/22/03	10/25/04
Metropolitan Telecommunications of FL, Inc. dba MetTel	FL	03/20/03	10/25/04
Metropolitan Telecommunications of FL, Inc. dba MetTel	GA	03/20/03	08/06/04
Metropolitan Telecommunications of FL, Inc. dba MetTel	NC	03/20/03	07/18/04
Metropolitan Telecommunications of FL, Inc. dba MetTel	SC	03/20/03	12/20/04
Mpower Communications, Corp	FL	02/28/03	10/25/04
Mpower Communications, Corp	GA	02/28/03	08/06/04
Myatel Corporation	FL	04/04/03	10/25/04
School Link, Inc.	NC	04/05/03	07/18/04
The Gulas Group, LLC	FL	05/10/03	10/25/04
USA Telephone, Inc.	FL	09/26/02	10/25/04

**EXHIBIT B: SPACE LICENSE**

1. AT&T, at its sole discretion, may license BellSouth to situate BellSouth equipment in the AT&T central office and to utilize AT&T site support services in the AT&T central office such as power, heating, ventilation, air conditioning and security for such equipment, for the sole purpose of interconnection. Such licenses and site support services are referred to herein collectively as a "Space License." If AT&T denies BellSouth a Space License in a particular AT&T central office, AT&T shall assure that BellSouth may interconnect with AT&T's network through an alternative arrangement reasonably acceptable to both parties, including without limitation, lease of AT&T's facilities directly connected to BellSouth's network; mid-span fiber meet; space in an adjacent premises; and an arrangement by which AT&T would assume ownership and control of equipment provided by BellSouth to be located in the AT&T central office for the sole purpose of interconnection.
2. The allowable network interfaces under a Space License are DS1, DS3 or another network interface as mutually agreed upon between the Parties to this Agreement.
3. Space Licenses are available subject to the availability of space and site support services in each AT&T central office. To establish a Space License, BellSouth must complete and submit a questionnaire providing requested information to support new space and site support services or to provide additional capacity for existing arrangements.
  - 3.1 Among the information to be provided in the questionnaire, BellSouth must identify the quantity, manufacturer, type and model of any equipment to be installed; the quantity, type and specifications of any transmission cable to be installed (collectively "Licensed Facilities"). The space in the AT&T central office in which BellSouth's equipment is or is to be located is referred to herein as the "Equipment Space."
  - 3.2 BellSouth is responsible for the installation of Licensed Facilities in accordance with AT&T's installation processes and procedures. BellSouth will use AT&T's certified vendors for the installation of License Facilities.
  - 3.3 If BellSouth desires to modify its request, prior to notification from AT&T regarding availability, BellSouth may do so by requesting that AT&T cancel the original request providing a new questionnaire to

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AT&T to process.

4. Following receipt of the questionnaire, AT&T will determine whether there is sufficient AT&T central office space and site support services to meet the request contained in BellSouth's questionnaire. AT&T will notify BellSouth in writing within thirty (30) business days whether there is sufficient AT&T central office space available for each such request.
5. Upon receiving written notification of the availability of AT&T central office space from AT&T, BellSouth will provide written verification that it still requires such AT&T central office space. This written notification is BellSouth's firm order for each AT&T central office space requested, and will constitute an executed Space License under the terms of this Exhibit B.
6. The rates and charges are to be negotiated by the Parties.
7. AT&T agrees to provide site support services as follows:
  - 7.1 AT&T will design, engineer, furnish, install, and maintain cable racks for BellSouth's use.
  - 7.2 AT&T will design, engineer, furnish, install, and maintain a battery distribution fuse board ("BDFB") from which AT&T will supply DC power to BellSouth.
  - 7.3 AT&T will provide common use convenience outlets (120V) as required for test equipment, etc. within Equipment Space.
  - 7.4 AT&T will maintain temperature and humidity conditions for the Equipment Space within substantially the same ranges that AT&T maintains for its own similar equipment.
8. AT&T will provide the amount of space requested by BellSouth unless AT&T reasonably determines the quantity of space requested is not available. If the amount of requested space is not available, AT&T will specify the dimensions of the Equipment Space available and will specify any physical or space separation requirements. If the amount of space requested is available, AT&T will provide the location of the space and will specify any physical or space separation requirements.
9. For the purpose of performing work for which BellSouth is responsible under this Exhibit B, AT&T licenses BellSouth to enter and exit the

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Equipment Space through portions of the AT&T central office as designated by AT&T. Unless a service outage is occurring or appears to be imminent, BellSouth shall perform its work in the AT&T central office during regular business hours as designated from time to time by AT&T. BellSouth and AT&T will establish contact lists and procedures for after hours entry to the AT&T central office.

10. BellSouth will provide a twenty-four (24) hour local or toll free telephone number which AT&T can use to verify the authority of such personnel to enter the Equipment Space. BellSouth shall furnish to AT&T, and keep current, samples of the identifying credentials to be carried by all BellSouth employees authorized to enter the Equipment Space. Notwithstanding Section 10 of the General Terms and Conditions of this Agreement, incorporated herein by this reference, or except in the case of willful misconduct or gross negligence on the part of AT&T, BellSouth hereby releases AT&T, AT&T's Affiliates and their officers, directors, employees, agents, contractors, and suppliers from liabilities arising from the acts or omissions of any person who possesses a BellSouth employee identification badge and who was verified and admitted by AT&T.
11. While in the AT&T central office, employees of BellSouth and its contractors must comply at all times with AT&T's security and safety procedures and requirements. AT&T may refuse entry to, or require the departure of, any person who is disorderly or who has failed to comply with AT&T's procedures and requirements after being notified of them.
12. Each Party shall cause its employees and contractors to act in a careful and workmanlike manner to avoid damage to the other Party's property and the property of others in and around AT&T's central office.
13. BellSouth's employees and contractors shall abide by the requirements of Section 5.10, Interference or Impairment, of Attachment 4, incorporated herein by this reference.
14. In addition to the Licensed Facilities, BellSouth may bring into the Equipment Space whatever tools and equipment necessary to install and maintain its equipment. BellSouth will be responsible for the care and safeguarding of all such items. BellSouth may not bring into the AT&T central office any of the following: wet cell batteries, explosives, flammable liquids or gases, alcohol, controlled substances, weapons,

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cameras, tape recorders, and similar items.

15. AT&T and its designees may inspect or observe the Equipment Space, the space designated by AT&T for BellSouth transmission cable, the Licensed Facilities, and any work performed by or behalf of BellSouth in the AT&T central office, at any time. If the Equipment Space is surrounded by a security enclosure, BellSouth shall furnish AT&T with all mechanisms and information needed for entry to the Equipment Space.
16. AT&T and BellSouth intend that the Licensed Facilities, whether or not physically affixed to the AT&T central office, shall not be construed to be fixtures. BellSouth (or the lessor of BellSouth equipment, if applicable) will report the Licensed Facilities as its personal property wherever required by applicable laws, and will pay all taxes levied upon the Licensed Facilities.
17. BellSouth agrees not to sell, convey, or lease BellSouth transmission cable under any circumstances, except for a conveyance of BellSouth transmission cable to AT&T or to another space licensee upon termination of the applicable Space License. BellSouth further agrees not to cause, suffer, or permit BellSouth transmission cable to become encumbered by a lien, trust, pledge, or security interest as a result of rights granted by BellSouth or any act or omission of BellSouth. If BellSouth transmission cable becomes so encumbered, BellSouth agrees to discharge the obligation within thirty (30) days after receiving notice of the encumbrance.
18. The licenses granted by this Agreement are non-exclusive personal privileges allowing BellSouth to situate the Licensed Facilities in the locations indicated by AT&T. These licenses and the payments by BellSouth under this Agreement do not create or vest in BellSouth (or in any other person) any property right or interest of any nature in any part of the AT&T central office.
19. The licenses granted to BellSouth under this Agreement shall be subordinate to any mortgages or deeds of trust that may now exist or may in the future be placed upon any AT&T central office; to any and all advances to be made under such mortgages or deeds of trust; and to the interest thereon and all renewals, replacements, or extensions thereof.
20. AT&T may relocate the licensed space, or the AT&T central office, or both upon thirty (30) days prior written notice to BellSouth. If

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relocation of Licensed Facilities is required, the party that originally installed such Licensed Facilities will be responsible for relocating them. Any such relocation work that is AT&T's responsibility and is performed by AT&T will be without charge to BellSouth. AT&T will reimburse BellSouth for the reasonable cost of such relocation work performed by BellSouth, and AT&T will provide at its own expense any additional or replacement cable racks and BellSouth transmission cable needed to accommodate the relocation of the installation. AT&T and BellSouth will work together in good faith to minimize any disruption of service in connection with such relocation.

- 21. Licensed Facilities will be furnished, installed and maintained in accordance with the following:
  - 22.1 BellSouth agrees to furnish all Licensed Facilities.
  - 22.2 BellSouth agrees to install the Licensed Facilities. BellSouth agrees to comply with specifications and processes furnished by AT&T for installation performed by BellSouth.
  - 22.3 BellSouth agrees to install the DC power supply and single circuit (battery and ground) from its fuse panel located in BellSouth's frame to the designated AT&T power source. BellSouth will distribute the power among its equipment within the Equipment Space.
  - 22.4 BellSouth agrees to maintain in good working order all BellSouth equipment in Equipment Space. AT&T agrees to repair BellSouth transmission cable. BellSouth is not permitted to repair installed BellSouth transmission cable in order to avoid possible harm to other transmission cables.
  - 22.5 BellSouth may use contractors to perform installation and maintenance for which BellSouth is responsible. AT&T consents to use of those contractors listed on a then current AT&T approved list of BellSouth submitted contractors. Use of any other contractors shall require AT&T's prior written consent, which shall not be unreasonably withheld.
  - 22.6 BellSouth may, at its own discretion and expense, choose to install its equipment in locked cabinets, provided that space and configuration will permit such. If BellSouth chooses to install its equipment in locked cabinets, BellSouth shall leave the appropriate keys with AT&T and agrees to allow AT&T the right of entry to such cabinets.

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22. Under the Space Licenses, AT&T performs no communications services, provides no goods except for short lengths of wire or cable and small parts incidental to the services furnished by AT&T, and provides no maintenance for any BellSouth equipment in Equipment Space. AT&T warrants that the services provided under this Agreement will be performed in a workmanlike manner and in accordance with AT&T technical specifications and that the incidental material provided by AT&T shall be free from defects. AT&T MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
23. In addition to any other rights or remedies that AT&T may have under this Agreement or at law, AT&T may terminate the applicable Space License if any of the following events occurs and is not corrected within thirty (30) days after written notice to cure:
- 24.1 BellSouth fails to pay charges due or fails to comply with any of the terms or conditions of this Exhibit B.
- 24.2 BellSouth fails to comply with applicable laws or is in any way prevented by the order or action of any court, or other governmental entity from performing any of its obligations under this Exhibit B.
24. In the event that a Space License is terminated for any reason, the Parties will act in accordance with the following:
- 25.1 Within thirty (30) days after termination of a Space License, BellSouth will, at its sole expense, remove all BellSouth equipment in Equipment Space and restore the Equipment Space to its previous condition, normal wear and tear excepted. If BellSouth fails to complete such removal and restoration within thirty (30) days after termination of the applicable Space License, AT&T may, at its option, upon ten (10) days written notice to BellSouth, perform the removal and restoration at BellSouth's sole risk and expense.
- 25.2 Because removal of installed BellSouth transmission cable may cause damage to other cables or fiber, BellSouth agrees to relinquish or transfer its transmission cable to AT&T or to another AT&T space licensee in lieu of removal. Upon termination of the applicable Space License, unless transferred to another AT&T space licensee, all BellSouth transmission cable will be automatically conveyed to AT&T, thereby becoming the property of AT&T, free of any interest or lien of any kind by BellSouth (or by any person claiming through BellSouth).

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At AT&T's request, BellSouth will promptly execute and deliver to AT&T a bill of conveyance or such other assurances as may be requisite to confirm or perfect the transfer of BellSouth transmission cable to AT&T.

- 25.3 If no monies are owed by BellSouth to AT&T under this Agreement, AT&T agrees to deliver such removed equipment to BellSouth's last known business address or to a domestic location designated by BellSouth, at BellSouth's sole risk and expense.

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## CERTIFICATE OF SERVICE

I hereby certify that on July 28, 2003, a copy of the foregoing document was served on the parties of record, via the method indicated:

- ☐ Hand
- ☐ Mail
- ☒ Facsimile
- ☐ Overnight
- ☐ Electronic

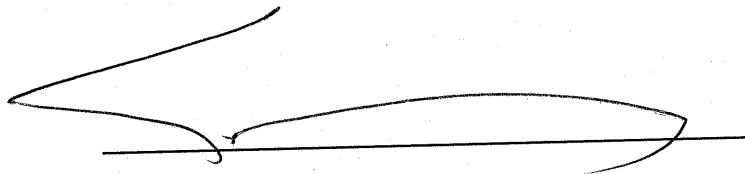
Henry Walker, Esquire  
Boult, Cummings, et al.  
414 Union Street, #1600  
Nashville, TN 37219-8062  
[hwalker@boultcummings.com](mailto:hwalker@boultcummings.com)

- ☐ Hand
- ☐ Mail
- ☒ Facsimile
- ☐ Overnight
- ☐ Electronic

Nanette S. Edwards, Esquire  
ITC^DeltaCom  
4092 South Memorial Parkway  
Huntsville, AL 35802  
[nedwards@itcdeltacom.com](mailto:nedwards@itcdeltacom.com)

- ☐ Hand
- ☒ Mail
- ☒ Facsimile
- ☐ Overnight

David Adelman, Esquire  
Charles B. Jones, III, Esquire  
Sutherland Asbill & Brennan  
999 Peachtree Street, NE  
Atlanta, GA 30309

A handwritten signature in black ink, appearing to be "David Adelman", written over a horizontal line.